



SENATE REPUBLICAN

POLICY COMMITTEE

Legislative Notice

No. 20

June 25, 2007

S. 1639: Comprehensive Immigration Reform

Calendar No. 208

The bill was read the second time and placed on the Senate Calendar on June 19 under the provisions of Rule 14.

Noteworthy

- On Tuesday, June 26, the Senate will vote on cloture on the motion to proceed to S. 1639, a bill that is similar to the comprehensive immigration bill considered by the Senate in May (a substitute, Senate Amendment No. 1150, to S. 1348, as amended). The key addition to S. 1639 is language providing \$4.4 billion in mandatory spending to help meet the bill's enforcement triggers. *Changes from S. 1348, as amended, and reflected in S. 1639 are explained in a chart at the end of this Notice. Another chart, explaining the timeline and substance of major changes to immigration law, is included at the end of the Notice as well.*
- Under a unanimous consent agreement reached last week, if cloture on the motion to proceed is invoked, the motion to proceed will be agreed to (i.e., no post-cloture debate or vote on the motion). The U.C. also provides for consideration of a Budget Act point of order on the bill (which amounts to a third 60-vote threshold).
- If cloture is invoked on the motion, cloture on the bill itself is likely to be filed on Tuesday, in which case, the second cloture vote likely would occur on Thursday.
- If the Senate considers S. 1639, it is expected that Senator Reid will "fill the amendment tree" so as to preclude other amendments, and that he will offer, and then demand the division of, a so-called "clay pigeon" amendment. (The anticipated 24 divisions will represent 24 amendments agreed to by negotiators from both sides of the aisle.) According to CRS, Rule XV permits any Senator to demand that an amendment containing several propositions be divided into its component parts. When an amendment is divided, each part is considered as if it were a separate amendment. After the Senate disposes of one division, the next division is placed automatically before the Senate for consideration. *For more information, please see the "Possible Amendments" section near the end of this Notice.*
- Once the 30 hours of post-cloture debate time on the bill have elapsed, the Senate would then vote on all the remaining divisions and motions in stacked fashion until the bill's final disposition.

Highlights

- Like its predecessor bill (S. 1348), S. 1639 includes the following key provisions:
 - trigger mechanisms in the bill, which requires that enforcement provisions be in place before any legalization of unauthorized aliens can come into being (as noted on p. 1, S. 1639 also provides \$4.4 billion in mandatory spending for meeting those triggers);
 - a new Y visa for temporary workers (in categories that are not already provided for in current law);
 - a new Z visa that would apply to most of the unauthorized aliens currently residing in the United States;
 - a merit-based point program to govern the awarding of future permanent resident status;
 - an end to “chain migration;” and
 - a new Electronic Employment Verification System (EEVS) to combat illegal work.
- **Trigger.** The temporary worker and legalization programs created under the bill will not become effective until the following have been funded, put in place, and put in operation: (a) 20,000 Border Patrol agents have been hired, (b) 300 miles of barriers, and 105 radar/camera towers, are in place on the southwest border, (c) the policy of “catch-and-release” has permanently ended and resources to detain 31,500 aliens per day have been obtained, (d) the new employment verification system is operational, and (e) the Department of Homeland Security (DHS) has begun processing applications for the unauthorized alien population (Z visas). There will also be a Government Accountability Office (GAO) review of the Administration’s certification that these assets are in place.
- **Border Security and Immigration Enforcement.** The enforcement provisions of this Legislative Notice may be compared to the same section in the Legislative Notice (No. 16) issued May 22, as there are significant differences in what each addresses. Generally, these sections add more personnel and assets to combating illegal immigration, and provide for some legal fixes to adverse court holdings. (Titles I and II)
- **New Temporary Worker Visa.** The bill provides 200,000 new temporary workers per year for areas of work not currently covered by another already-created work visa category. (Title IV)
- **Increasing Green Card (Permanent Resident) Quotas.** The bill dissolves the diversity visa program and restricts some types of extended-family immigration (and caps number of immigrant parents of U.S. citizens) to add more green card numbers to the current backlog of applicants. That current backlog (minus those who applied after May 2005) is, thus, expected to be completed within eight years. New applicants for green cards would almost immediately have to apply under the new merit-based system. (Title V)
- **New Merit System.** The bill institutes a new merit-based system that places those who have earned the most highly-prized skills at the front of the line for green cards. It is expected that 60 percent of immigration to the United States would still be nuclear-family-based, but *extended* family would only receive some preference under the merit system. (Title V)

- **Z visas and the current unauthorized alien population.** The current unauthorized alien population will be given a chance to become legal by registering within the one-year registration period given to declare themselves. The applicants must pay a fine, undergo a background check, and will be given a Z non-immigrant visa that must be renewed every four years. If the Z visa holder wishes to pursue a permanent residence, he or she must qualify under special rules to the new merit system (Title VI) and must apply abroad (Title VI).
- **Electronic Employment Verification System (EEVS).** The bill creates a new electronic employment authorization verification system. Employers would be required to check their new hires, and eventually their current employees, by submitting employee information through the Internet or telephone and checking identity and authorization documents. The bill allows for DHS to implement a plan whereby photographs on documents submitted by the employee would appear on an employer's screen via Internet, so that the employer can help verify identity. (Title III)

Bill Provisions

The following sections provide a summary of the major sections of the bill by title; *this is not a comprehensive section-by-section review of the bill* as this Legislative Notice attempts to organize sections by subject matter. Section numbers pertaining to the bill are noted at the end of each descriptive section.

The bill is organized in this fashion:

Title I – Trigger & Border Security

Title II – Interior Enforcement

Title III – Electronic Employment Authorization Verification

Title IV – Temporary Workers

Title V – Green Card Quotas (and sub-quotas)

Title VI – Legalization of Unauthorized Aliens (including modified DREAM Act)

Title VII – Miscellaneous (English, assimilation, naturalization)

Title VIII – Miscellaneous (unaccompanied children)

Title IX– Miscellaneous (Study of “enemy aliens” during World War II)

[For assistance in reading the legislative descriptions in this Legislative Notice, RPC has provided a small glossary, which is appended to this Notice.]

TITLE I – BORDER ENFORCEMENT ASSETS FOR CONTROLLING U.S. BORDERS

Trigger. The programs created by Title IV (temporary workers) and Title VI (legalization) will not become effective until the President certifies, and GAO confirms, that the following have come into being and the Treasury has released \$4.4 billion to meet these triggers:

- 20,000 Border Patrol agents reporting for duty,
 - 4 Unmanned Aerial Vehicles (UAVs),
 - 300 miles of vehicle barriers, 370 miles of fencing, and 105 ground-based radar and camera towers on the southwest border,
 - a permanent end to the policy of “catch-and-release,” replaced with resources to detain 31,500 aliens per day,
 - electronic employment verification system (per Title III), and
 - the Department of Homeland Security is processing applications for Z visas.
- (Sections 1 and 2)

Enforcement Personnel. A total of 14,000 new Border Patrol agents would, subject to appropriations, be added between 2007-2012, 20 percent of the yearly net increase of which would be devoted to the northern border (another section provides that 500 Customs & Border Patrol (CBP) agents are to be added each year from 2008-2012, subject to appropriations). As of May 2007, there are approximately 13,000 Border Patrol agents. Further, the bill adds 50 more Deputy Marshals per year for 5 years to assist in matters relating to immigration cases. The bill authorizes 1000 new Immigration & Customs Enforcement agents (200 annually from FY 2008 to FY 2012). (Section 101(a)).

Technological Assets and Infrastructure. The bill authorizes such sums as necessary for the acquisition of unmanned aerial vehicles (UAVs), cameras, poles, sensors and other technologies to achieve operational control of the borders, and additional fencing near San Diego. (Sections 102, 103, 124 and 125)¹

US-VISIT and Entry Inspection. The bill restates DHS’s authority to collect biometric entry and exit data at U.S. ports of entry. By October 1, 2008, DHS will be required to enhance the connectivity between the Automated Biometric Fingerprint Identification System (IDENT) and Integrated Automated Fingerprint Identification System (IAFIS) biometric databases, and collect all fingerprints from individuals through the United States Visitor and Immigrant Status Indicator Technology (US-VISIT) program during their initial enrollment. The bill also requires DHS to submit to Congress a timeline for equipping all land-border ports of entry with the US-VISIT system and deploy at all land-border ports of entry the exit component of the US-VISIT system. It also authorizes DHS to collect biometric data from any alien seeking admission to, exit from, transit through, or parole into the United States, and provides that failure to comply with the biometric requirements is a ground for inadmissibility. The bill makes it a crime to

¹ The Senate-passed immigration bill last year, S. 2611, would have required DHS to replace damaged primary fencing with double- or triple-layered fencing in Arizona population centers on the border, and to construct at least 200 miles of vehicle barriers and all-weather roads in areas that are known transit points for illegal cross-border traffic. (Note, however, that last year, H.R. 6061, the Secure Fence Act of 2006, was enacted, authorizing 700 miles of fence along the border; funds for about half of that were later appropriated.)

evade a port of entry inspection,² and certain customs seizure capabilities are expanded (Sections 112, 114, 129, 130). The bill would amend section 275 of the Immigration & Nationality Act (INA) to increase penalties for illegal entry or reentry into the United States (some of the criminal actions would be considered felonies). (Sections 206-207)

Border Security Plans and Reports. Like S. 1348, the bill requires DHS to submit a comprehensive plan for the systematic surveillance of the U.S. land and sea borders, a National Strategy for Border Security, and a plan to combat human smuggling and cross-border deaths. DHS would also be required to construct 700 miles of reinforced fencing along the southwest border, 370 of which would be priority fencing, and all of the construction would require DHS to consult with local authorities. A port-of-entry infrastructure assessment and a demonstration program is mandated, along with a National Land Border Security plan. The Government Accountability Office (GAO) is directed to review Border Patrol training. There will be a report on deaths at the U.S.-Mexico border and on damage to federal protected lands. The Shadow Wolves Border Patrol unit and the Northern Border Prosecution Initiative Reimbursement program would be authorized. (Sections 101, 103, 121-122, 126-127, 133-135, 139)

Catch & Release. DHS can only release aliens from non-contiguous countries in detention with a \$5000 bond. (Section 113)

DOL Anti-Fraud Efforts. The Department of Labor (DOL) will be given anti-fraud training. (Section 131)

New Grant Program. A new grant program for states with large unauthorized alien populations (\$50 million per year for 2008-2012) would be authorized. (Section 132)

Asylum. New procedures would be instituted at the border or at ports-of-entry for aliens who express a “credible fear of persecution,” including the recording of Expedited Removal proceedings and the establishment of family-friendly detention centers. An entire Title has been added regarding the treatment of unaccompanied children and their asylum claims (this situation comes up when a child is placed on an airplane or other vehicle bound for the U.S.). Another title involves setting up a commission to study the treatment of European “enemy aliens” and the rejection of certain Jewish refugee claimants during World War II. (Section 140-150, Titles VIII and IX)

² More specifically, this refers to the situation where an applicant for entry at a land border is sent for a secondary inspection, but rather than have the car searched, the alien takes off in the car, sometimes damaging infrastructure and injuring people at the port of entry.

TITLE II – INTERIOR IMMIGRATION ENFORCEMENT

Additional personnel. The bill authorizes significant increases in immigration personnel for each year in 2008-2012: 100 more trial attorneys (for immigration court); 100 more U.S. Citizenship & Immigration Services (USCIS) adjudicators (to evaluate immigration applications); 50 more attorneys devoted to immigration cases at U.S. Attorney offices; 20 new Immigration Judges (for immigration courts) with 80 support staff; 10 more Board of Immigration Appeals (BIA) judges; 20 more BIA staff attorneys with 10 more support staff; 50 more staff for the Administrative Office of U.S. Courts (AOUSC) for the Federal Defender Program; and 50 more attorneys at the Office of Immigration Litigation in the Department of Justice (OIL). It also authorizes one clerk for each immigration judge. (Section 201)³

Improved Document Integrity. The bill provides a comprehensive rewriting of chapter 75 of Title 18 of U.S. Code (passports and visa fraud) and also expands passport, visa, and immigration anti-fraud provisions.⁴ (Sections 208, 209, 214)

Detention and Removal of Aliens. The bill authorizes, subject to appropriations, DHS to build 20 new detention facilities that could together hold 20,000 individuals at any one time for removal proceedings. The Supreme Court's decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001) mandates the release of a former criminal alien detained for the purpose of deportation if his deportation cannot be secured within six months. (*Note: many countries refuse to accept some of their own citizens or otherwise make it very difficult for DHS to deport them home.*) The bill provides authority to detain beyond the removal period aliens ordered removed who are inadmissible; who are removable as a result of violations of status requirements or entry conditions, violations of criminal law, or reasons of security or foreign policy; or who have otherwise been determined by the Attorney General to constitute a risk to the community or to be unlikely to comply with the order of removal. (Sections 137, 202) There are increased penalties for illegal reentry into the United States after formal removal. (Section 207)

³ Last year's Senate-passed immigration bill, S. 2611, would have increased the number of Immigration & Customs Enforcement agents by 2000 per year for four years. The bill mandates each State to have at least 40 immigration enforcement agents, and at least 15 service personnel (the Secretary of Homeland Security may waive this requirement for states with smaller populations).

⁴ It also creates a new crime for: (1) trafficking in passports and punishing those who unlawfully produce, issue, transfer, forge, or falsely make passports, as well as those who transact in passports they know to be forged or counterfeited, and those who prepare, submit, or mail applications for passports that they know include a false statement; (2) completing, signing, or submitting a passport application knowing that it contains a false statement or representation; (3) knowingly and without lawful authority producing or issuing a passport for or to any person not owing allegiance to the United States; (4) knowingly and without lawful authority transferring a passport to a person for use when such person is not the person for whom the passport was issued or designed; (5) knowingly using a passport to enter or attempt to enter the country, knowing that the passport is forged or counterfeited; (6) knowingly using a passport to defraud an agency of the United States or a State, knowing that the passport is forged or counterfeited; (7) knowingly executing a scheme to defraud any person in connection with any matter arising under the immigration laws or that the offender claims arises under the immigration laws; (8) knowingly using any immigration document issued or designed for use by another; (9) trafficking in immigration documents; (10) knowingly and without lawful authority, producing, obtaining, or possessing various papers, seals, symbols, or other materials used to make immigration documents; (11) entering into multiple marriages to evade immigration law; and, (12) arranging, supporting, or facilitating such multiple marriages. The bill renders inadmissible and removable any alien convicted of a passport or visa violation under Chapter 75 of title 18.

Aggravated Felony. The term “aggravated felony” under the INA is modified to include (a) convictions even if the length of the sentence was based on recidivist or other enhancements, (b) all human smuggling crimes, (c) any felony conviction under INA section 275 (Improper Entry by an Alien) and section 276 (“Reentry of Removed Alien”), and (d) soliciting, aiding, abetting, counseling, commanding, inducing, or procuring another to commit one of the crimes listed already in the definition. *(Note: the current definition covers only crimes under Sections 275(a) and 276 that were committed by an alien previously deported for another aggravated felony; by capturing the rest of Section 275, the definition now includes felony convictions for marriage fraud and immigration-related entrepreneurship fraud.)* The bill also bars a refugee convicted of an aggravated felony from eligibility for adjustment of status (i.e., the refugee would not be allowed to get a green card). (Section 203). It would be a crime to carry a firearm when smuggling aliens (Section 205(f)). The bill also makes it a crime for an alien who is not a permanent resident (green card holder) to purchase a firearm (by amending 18 U.S.C. §922) (Section 213).

Gang Violence. Agreement to amend the substitute to S. 1348 means that the applicability of inadmissibilities in this section are not effective ***unless they occurred after enactment***. The bill renders inadmissible any alien who is known to be or believed to be (by a consular officer, or DOJ, or DHS employee) a member of a gang, or who participates in such a gang’s activities if the alien knows or has reason to know that such activities supported the gang’s illegal conduct. Temporary Protected Status (TPS) is denied to any alien who is a member of a gang. (Section 205). Temporary Protected Status (TPS)⁵ is a “quasi-refugee-like” status given to nationals of countries that have recently undergone trauma (e.g., hurricane, civil war); some of those granted TPS are known to have become criminal gang members, and the bill would allow DHS to revoke TPS status if the alien is part of such a criminal gang. (Section 205(d))

Institutional Removal Program. The bill authorizes DHS to extend the Institutional Removal Program (IRP), which identifies removable aliens in Federal and State prisons and removes such aliens after completion of their sentences, to all states. It also directs the Secretary of DHS to study the effectiveness of alternatives to detention, including electronic monitoring and the Intensive Supervision Appearance Program (ISAP). It also provides for incentives to unauthorized aliens to accept voluntary departure. (Section 210-212)

Diplomatic Security Services & Visas. The bill authorizes Special Agents of the State Department and the Foreign Service to investigate illegal passport or visa issuance, identity theft, document fraud, and Federal offenses committed within the special maritime and territorial jurisdiction of the United States⁶ (Section 215). The bill provides for a technical change describing when a visa can be cancelled (Section 228). The bill also makes clear that the revocation of a visa is not subject to judicial review (Section 229).

⁵ See Immigration & Nationality Act (INA) section 244.

⁶ Essentially, this authorizes Diplomatic Security (DS), the State Department’s law enforcement bureau, to investigate internal corruption in the issuance of visas and passports, and to conduct those investigations at U.S. embassies and consulates abroad (there are Inspector General reports on this). Since the laws surrounding diplomatic compounds and residences can make it difficult to obtain local law enforcement assistance, and jurisdictional matters can be confused, this provision is required to clarify that authority and jurisdiction.

State and Local Law Enforcement of Federal Immigration Laws. The bill requires the Secretary of Homeland Security to reimburse state/local police organizations for training required under Immigration & Nationality Act §287(g). (Sections 218, 221, 223). The State Criminal Alien Assistance Program (SCAAP) would be increased to allow DHS to reimburse state and local governments for costs associated with processing unauthorized aliens through the criminal justice system. Appropriations are authorized at \$750 million for FY2009, \$850 million in 2010, and \$950 million for FY2011-2013 (Section 217).

Streamlined Background Checks. The bill would create a task force to discover and implement ways to increase response time for applications for immigration benefits that have been delayed because of an unresolved background check. (Section 216)

Protecting Immigrants from Convicted Sex Offenders. The bill prohibits certain criminals (i.e., convicted sex offenders) from sponsoring an alien (e.g., spouse or fiancée) for a green card unless the DHS determines that the sponsor poses no threat to the alien.⁷ (Section 222)

TITLE III – WORK AUTHORIZATION VERIFICATION

The Title begins with an explanation of the purpose for creating a new electronic work authorization verification system. (Note: many conservatives believe that such a system is a major component of addressing further illegal immigration by requiring all the nation's employers (estimated at 7 million) to verify the work authorization of all new employees as they are hired). (Section 301). [Note: RPC has issued a policy paper explaining the intricacies of the current system and considerations for changes:

[//rpc.senate.gov/_files/Feb2806WorkAuthLBAddendum.pdf](http://rpc.senate.gov/_files/Feb2806WorkAuthLBAddendum.pdf).]

The title *replaces INA section 274A*, and makes clear that it is unlawful for an employer, or a subcontractor for an employer, to knowingly or with reckless disregard hire or continue to hire an alien who is not authorized to work. An employer who in good faith complies with the requirements of this section has an affirmative defense against that unlawfulness. (Section 302(a))

Attestations. An employer must attest, under penalty of perjury, that he or she has reasonably verified the identity and eligibility for work of each new hire. (New INA 274A(c)(1)(A)). A new hire must attest that he/she is a citizen, permanent resident, or an alien authorized to work. (New INA 274A(c)(2)). Employers must keep copies of the verification forms (new INA 274A(c)(3)-(4)).

Examination of Documents. An employer must examine a document from each new hire that verifies both identity and work authorization, or two documents that together prove both. (Note: all U.S. citizens and Legal Permanent Residents (“green card holders”) are work authorized.) (New INA 274A(c)(1)(A))

⁷ See GAO report No. GAO-06-735.

Documents Establishing Work Authorization. Documents that verify both identity and work authorization are specified to be: (1) a U.S. passport, (2) a green card, (3) a U.S. visa (or other document issued by the State Department) indicating work authorization, if it contains certain biometric features,⁸ and (4) a card given to Z visa holders for interim benefits.⁹

Documents that verify identity include: (1) REAL ID “compliant” driver’s license or state ID, (2) a non-REAL ID compliance driver’s license that DHS approves, and (3) other documentation that is approved by DHS. Documents that verify work authorization: (1) a Social Security Card (other than one stamped “not valid for employment”), but DHS, under this bill, may at some point restrict this to only newly issued Social Security Cards that are updated for enhanced security, and (2) other documentation that DHS approves. (New INA 274A(c)(1)(C)-(F))¹⁰

Timetable. DHS will issue regulations regarding the timetable for all employers to comply with the new system. No later than six months after enactment, however, DHS will require critical infrastructure companies to comply; within 18 months after enactment, all employers will use the new verification system with regard to all new hires; and, within three years all employers will have to verify all their current employees. GAO will conduct audits of the system during the initial implementation of the system. (New INA 274A(d))

Registration. All employers will have to be registered for the system, and use the System to provide DHS with identity and documentation information for each hire on the first day that the employee starts work. However, the employer cannot make verification a condition of employment. (*Note: the system is anticipated to be primarily Internet-based, but provides for telephonic inputs and responses.*) (New INA 274A(d)(5)(A))

Inputs into the System. After the employer inputs the information in the System over the Internet, DHS will provide a confirmation or non-confirmation within three business days. (*Note: in most cases, it is anticipated the DHS will be able to send a picture, identical to the picture in each submitted document, to the employer to help verify identity.*) DHS may provide the employer with a further action notice, and expect the employer to comply. If the employee receives a further action notice through the employer, the employee has 10 days to contest, or a non-confirmation notice will be issued; a contest will be settled with finality within 10 days of the contest. A non-confirmation notice means the employer must terminate the employee’s employment. (New INA 274A(d)(5)(A)-(E))

⁸ A U.S. visa is currently issued on counterfeit-resistant foil and affixed to a foreign passport; it contains a picture of the visa holder and other identifying information; fingerprints for non-immigrants are taken at the time of application and provided to the U.S. VISIT system managed by DHS (for comparison at the port of entry).

⁹ Note: this does not include the current Employment Authorization Card (EAC) that DHS issues to work authorized aliens, but one that has been criticized for being too easy to counterfeit and too susceptible to corrupt issuances.

¹⁰ Note: under current law, an employer can accept a host of documents that the Government Accountability Office (GAO) has concluded are easily counterfeited or do not actually verify work authorization or identity.

Employers are prohibited, among other things, from using the System to pre-verify new hires before they actually begin work, or require new hires to pre-verify themselves. Penalties can reach up to \$10,000 for each violation. (New INA 274A(d)(5)(F)). Employers are protected from liability for using the System to verify work authorization. (New INA 274A(d)(6))

Challenges to non-confirmation. Individuals who receive a non-confirmation may challenge the response within 15 days through administrative review at the Social Security Administration, for those who claim U.S. citizenship, and at DHS for those who are aliens. (New INA 274A(d)(7)). There will be an exclusive method for judicial review under 28 U.S.C. 158, with few exceptions. (New INA 274A(d)(8)).

Management of the System. DHS will manage the system and provide for appropriate changes to the System, and may develop algorithms to combat identity theft. It will have access to passport, visa, Social Security,¹¹ and state vital statistics and driver license databases to operate the System, and is authorized to display the photograph used in passports or driver's licenses (or other) with the employer to assist in verifying the identity of the new hire. DHS is restricted from using the databases for anything other than enforcing immigration laws, laws related to the System, or anti-terrorism laws. (New INA 274A(d)(9)-(11)). DHS will have access, under stringent conditions, to certain taxpayer information for enforcement purposes. (Section 304)

Compliance and enforcement. DHS will set up procedures to ensure employer compliance, including the conduct of investigations. Various civil and criminal penalties are set out, and DHS can require an employer to certify that it is in compliance with this Title; the conditions for judicial review of any such non-compliance are set out as well. DHS may create a lien against an employer for violations and payment of penalties under this Title. There is a prohibition against indemnity bonds, and violators will be prohibited from partaking in certain government contracts. (New INA 274A(e)-(h), (l)). DHS may issue regulations that require an employer to take action with respect to an employee who is the subject of a *Social Security No-Match letter* (a letter sent from SSA explaining that the name and Social Security number written on a W-2 tax form does not match Social Security records). (New INA 274A(k)).¹² The Internal Revenue Service and SSA can assist DHS in certain enforcement (Section 309).

¹¹ Note that the responsibilities of the Social Security Administration (SSA) are specified in Section 308, and generally involve providing DHS access to its database of Social Security numbers and matching names. SSA currently enumerates almost all persons born in the United States at the time of birth, and enumerates immigrants at the time they enter the country for permanent residency. Social Security numbers can be issued to aliens legally in the U.S., but if they are not work authorized, the card will indicate this (starting in 2001).

¹² Currently these letters contain a statement to the employer that the letter cannot be the basis for a dismissal. Since a "no match" of W-2 form information with Social Security records could be the result of a typographical error, or of identity theft, it is reasonable to allow the subject of a no-match letter to be given a reasonable period to resolve issues.

TITLE IV – TEMPORARY WORKERS, AND H-2C VISAS

This title amends Section 218A of the INA.

Y Visa. A new Y visa is created for aliens who intend to work in the U.S. under terms not already provided for in other existing temporary work visa categories. The Y-1 visa is the general visa category, while there is a revised H-2A category for seasonal agricultural workers. The Y-2B category is for seasonal non-agricultural workers; and the Y-3 category is for family derivative visas. (Section 401 inserts new section 218A into the Immigration and Nationality Act (INA)). The fee includes a processing fee, and \$500 for a state impact fee (\$250 for a derivative family member) (new INA section 218A(e)(3)) The bill sunsets the Y visa program five years after enactment (Section 401(d)).

Matching Willing Workers with Willing Employers. All Y workers must be matched to “willing employers” through an electronic database in order to qualify for a Y worker visa. (Section 414)

Families of Y Visa Holder. Family members can only accompany Y workers if the worker can show proof of valid medical insurance and demonstrate that the wages of the principal Y nonimmigrant(s) are 150 percent above poverty level for the household size. Spouses and children who do not qualify for the Y-3 visa may be admitted under other nonimmigrant status. (New INA section 218A(e)(8))

Period of Admission. A Y-1 worker can be admitted for a two-year period that can be renewed twice if that worker spends a period of one year outside the United States between each admission; a Y-1 accompanied by dependents is afforded a single two-year visa, non-renewable; workers with Y-2A and Y-2B (seasonal agriculture) visas qualify for 10-month visas; no extensions may be granted. (New INA section 218A(i))

Family Visitor Visa. The bill also creates a new special family visitor visa for aliens to enter the country temporarily to visit family of Y visa (Title IV) holders, but those aliens must post a \$1,000 bond, possess the means to return to the country of origin, may not stay for more than 30 days per year and cannot work. Further, DHS will issue a report studying the family situation of Y visa holders, and may make ineligible nationals of certain countries with a history of sending family member who overstay. All family visitor visa abusers will be permanently barred from immigration benefits (except for asylum), and the Y or citizen sponsor of such alien will be barred from again sponsoring aliens for the family visitor visa (and such Y visa holder will have his or her visa terminated). (Section 506)

Inadmissibility. Various immigration inadmissibilities do not apply to Y workers, including having been in the United States illegally in the past, having been a stowaway, and having committed certain types of fraud or misrepresentation. The Y visa status will terminate if the worker becomes unemployed for 60 days. A Y worker who fails to timely depart is permanently barred from any future immigration benefit. (New INA sections 218A(f), (h), (j), (l), (n))

Wage. The employer must attest that the Y worker will be paid a competitive wage and that the employer advertised the job twice. Employers can become ineligible to petition for Y workers if they violate certain conditions, and all employers will be denied petition approval for a worker destined to work in a county with high (7-percent) unemployment. Y visa holders cannot act as independent contractors; special conditions are placed on labor recruiters. (INA section 218A(c) and section 403). The Department of Labor may hire 1000 more investigators to ensure compliance with labor standards (Section 410).

State Impact Grants. The state impact fees will be placed in an account and distributed by the Department of Health and Human Services in the amount of \$5 million for each state, or more depending on the size of the foreign population in the state, adjusted by a provision for high impact areas. (New INA section 218A(x))

Seasonal Agricultural Workers. Agricultural associations can submit applications on behalf of employer members. The agricultural worker portion of the bill would reform the current system of issuing H-2A agricultural worker visas (currently, only about 35,000 H-2A visas are issued each year even though the visa category is uncapped, mainly because the process is so cumbersome). The reform would, among other processing changes, allow agricultural workers 10 month stays in the United States and two months out of the United States each year (the same as seasonal H-2B non-agricultural workers have currently). Goat herders, sheep herders, horse workers, and dairy workers would have the option of one of the two options discussed above (Subtitle B).

Numerical Limitation. The Y-1 visa program would have a cap of 200,000. There are no numerical limitations for H-2A visas while the Y-2B visas are initially capped at 100,000 with yearly adjustment based on market fluctuations. The market-based fluctuation is adjusted every six months during the fiscal year. The Y-3 visa for spouses and minor children limit may not exceed 20 percent of annual limit for Y-1 visas. A newly created Standing Commission will make recommendations to Congress regarding the Y visa numerical cap for each fiscal year following the initial year of the program. (Section 408)

Sending Countries. The Secretary of State may negotiate with a sending country, as a condition of granting Y visas to its citizens, a bilateral agreement to ensure the country will readmit its nationals if ordered removed. (Section 409)

Commission on Immigration and Labor Markets. The President will appoint members with expertise in economics and immigration from the private sector, and form a Commission with cabinet members to study the impact of nonimmigrant workers on the U.S. economy. (Section 411)

Student Visas and Dual Intent. The bill allows student aliens to work off-campus. (Note: most student visa holders are exempt from Social Security payments.)¹³ The bill extends foreign students' post-curricular Optional Practical Training (and F-1 status) to 24 months. It also creates a new "F-4" student visa for advanced degree candidates studying in the fields of math, engineering, technology, or the physical sciences. The new visa will allow eligible students to either return to their country of origin or remain in the United States for up to one year and seek employment in their relevant field of study. The bill eliminates "dual intent" (that is the ability to apply for permanent status at the same time that the alien is in the United States in temporary status) for a number of categories including H-1B, but allow certain student dependents the ability to escape this requirement. (Section 418)

H-1B Visa Streamlining. The bill adds provisions to increase the H-1B visa quota from 85,000¹⁴ to 115,000 in FY2008, with an escalator clause based on demand for H-1B visas. H-1B visa holders can remain in the U.S. over the normal six-year limit if an employer sponsors them for a merit-based green card. Certain requirements for employers hiring H-1B visa holders are changed and streamlined, but with antifraud provisions inserted. (Sections 419-421) Fees for H-1B visas would be increased by \$3500 per visa, to pay for an American Competitiveness Scholarship program. (Title VIII)

L-1 Visa Reform. The bill places new requirements on regular and start-up L-1 inter-company transferee visas. Specifically, it requires start-up companies to provide business plans, proof of physical premises, proof of financial viability, and other supporting evidence before the visa can be issued. In some cases, L-1 visa status may only be granted for one year. (Sections 422, 424)

Medical Services in Underserved Areas. The bill permanently authorizes the current J-1 visa waiver for INA 212(e) (the requirement that foreign medical students go back to serve in their home country for two years before applying for a green card in the U.S.). Under this program, participating states are allocated 30 J-1 visa waivers, which enables them to waive the two-year home-residency requirement for medical students and physicians who serve in "medically underserved areas" upon completion of their J-1 program. The program has been reauthorized twice before. (Section 425).

¹³ 42 U.S.C. 410(a)(19).

¹⁴ Some H-1B visas are not subject to a cap, and others have certain conditions on them.

TITLE V – GREEN CARD QUOTAS

The Quota Numbers. [For a fuller explanation of this issue, see the attached chart.] Family-sponsored immigrant quota will be set at 567,000 green cards per year until the first Z visa holders (Title VI) begin gaining permanent residence, and thereafter, the cap is set at 127,000. Immediate relatives (spouses and minor children of U.S. citizens) will remain uncapped. (Explanatory note: this section is intended to increase the green card quota while the current backlogs in applications are eliminated in eight years; thereafter, applicants for green cards will be adjudicated by the new merit system that this title sets forth, with a smaller portion guaranteed to be used for family-based immigration.).

The Merit Points. The current employment-based green card categories is struck (Immigration & Nationality Act section 203(b)(1)-(3), and replaced with the merit-system. Initially (for at least six years), points under the merit-system will be allocated as follows (in summary):

Merit-Based Green Card Quotas. The world-wide level of merit-based green cards for the first five fiscal years will be set at 242,335, the number of employment-based green cards that were issued in FY05, but 10,000 of those must be used for exceptional aliens that came in under the Y visa category (Title IV), and 90,000 is to be used to help reduce the backlog of pending cases. Thereafter, the quota will be set at 140,000 until Z visa holders start applying for green cards (with the same sub-allocation described in the last sentence). Once Z visa holders are eligible for green cards, the cap will increase to 380,000, (plus any number of green cards needed to provide qualified Z visa holders green cards) per fiscal year, with 10,000 of that number guaranteed for exceptional Y visa holders. (Section 501). Certain quotas for Special Immigrants, employment creation visas, and fiancé visas are also changed (Section 502(b)(4)).

Aliens Not Subject to a Quota. Two categories of aliens will be added to the list of aliens who are not subject to the green card cap: accompanying parents of a green card holder, and aliens born to a green card holder while temporarily abroad. (Section 503(a)). “Immediate relative” is redefined to mean just the (under 21) child or spouse of a citizen (over 21 years of age) or certain deceased citizens, or battered spouse/child. (Section 503(b)). Children of World War II veterans and other veterans, who are not U.S. citizens at birth, will be exempted from the quota. (Section 509).

Family-based green card quotas. [See attached chart for a full explanation of this section.] Family categories and respective quotas are redefined, so that the categories will be: (1) parent of a citizen, over the age of 21, capped at 40,000 per year; (2) spouses or children of green card holders or non-citizen U.S. nationals, capped at 87,000 per year (the same as current law); and (3) 440,000 green cards total per year, to unmarried adult children of citizens, with no more than 70,400 per year, and unmarried adult children of green card holders, with no more than 110,000 per year, married adult children of U.S. citizens, at 70,400 per year, and siblings of U.S. citizens, at 189,200 per year. Note that if any backlog is cleared in any of these lines, the extra green cards in that line would transfer to backlogged lines. (Section 503(c)).

<u>Work:</u>	<u>Up to:</u>
Employment in a high-demand	20 points
Specialty	16 points
National interest area	8 points
Employer endorsement	6 points
Experience	2 points
Age of worker	3 points
	maximum 47 points

<u>Education:</u>	<u>Up to:</u>
MD, MBA, graduate degree	20 points
BA	16 points
Associate's degree	10 points
HS diploma	6 points
Vocational certification	5 points
DOL apprenticeship	8 points
Science, Tech., Engineering, and Math (STEM)	8 points
	maximum 28 points

<u>English:</u>	<u>Up to:</u>
Native speaker or 75+ TOEFL score	15 points
TOEFL score of 60-74	10 points
Pass Naturalization test	6 points
	maximum 15 points

<u>Extended family:</u>	<u>Up to:</u>
Son or Daughter of U.S. national	8 points
Son or daughter of green card holder	6 points
Sibling of national or green card holder	4 points
If applied for family category after May 1, 2005	2 points
	maximum 10 points

<u>Extra Points for Z visa holders:</u>	<u>Up to:</u>
Agricultural work	25 points
U.S. employment experience	1 point
Home ownership	1 point per year owned
Medical insurance (Section 502).	5 points

DHS will set by regulation a timeline of when to accept merit-based applications. (Section 502(b)). Applications that were submitted prior to January 2007 (but which are reasonably expected to be processed before 2027) will be treated under the existing petition process with an accelerated backlog reduction schedule (Section 502(d)). The provisions requiring an affidavit of support for certain employment-based green cards (sponsored by family business) are struck (but these affidavits were never enforced) (Section 502(e), (f)). The

inadmissibility for entering the United States for work without a labor certification is struck (Section 502(e)(6)).

Per-Country Quotas. The per-country caps in current law will be expanded to allow 10 percent of the world-wide quota to be used for any one country, except that there will be no cap for Z visa card applicants for green cards, and certain family petitioners currently in line for a green card. (Section 508)

Census. There will be a survey conducted among those in the current applicant line, and DHS may cancel the petition of those who do not respond to the survey (that is, a non-response would be taken as a sign that the petitioner is no longer serious about his/her application). The top 20 percent of the Z visa population (created in Title VI) will be the first to qualify for a green card under a special green card allocation for Z visa holders. This allocation will be distributed over five years to all Z visa card holders who qualify for a green card under the new merit system. (Section 503(f)).

Special cases. The bill creates a new section 203A in the Immigration & Nationality Act (INA) for hardship cases involving family (but caps the quota for these cases at 5,000 per year). (Section 504).

Confidentiality. DHS may audit immigration applications and refer information to the appropriate law enforcement agencies to pursue cases of fraud; the fraud prevention fund (under INA section 286(v)(2)) will be redistributed. (Section 507).

TITLE VI – Z VISAS AND LEGALIZATION

This title provides a new visa for most individuals currently living within the United States illegally.

Z visa status. The bill creates a new four-year, renewable “Z” nonimmigrant visa to address the unauthorized alien population within the U.S. Applicants must prove that they were illegally in the U.S. before January 1, 2007, and must be employed at the date of application, must pay a fine, a processing fee, and a state-impact fee, and must undergo a background check.

Inadmissible to the program. Applicants for a Z visa would not be eligible to get a Z visa if they are inadmissible under INA §212(a) (e.g., if they have a contagious disease, are a terrorist, a World War II-era Nazi, a child abductor, a former U.S. citizen who renounced to avoid tax liability, an unlawful voter) and if the applicant had been convicted of a felony or three misdemeanors). However, under the bill *the following* inadmissibilities will not apply to Z visa applicants: (a) committing fraud or misrepresentation for any immigration purpose (other than for obtaining work) prior to application, (b) being a stowaway, (c) being a student-visa abuser, (d) lacking proper immigration documents, and (e) being unlawfully present in the U.S. However, the Secretary is unable to waive certain inadmissibilities including child abduction provisions, except that the Secretary may waive any provision for humanitarian reasons. (Section 601(d)). If the principal Z alien becomes inadmissible or removable, the Z visa terminates, and so do the Z visa benefits to any derivative (non-citizen) spouse and child. (Section 601(o)). There is a special exemption for past conduct of aliens who violated the

criminal code on making counterfeit or falsified entry documents with respect to waived inadmissibility (Section 609).

Fees and Penalties. To apply, the alien must pay fees and penalties amounting to: \$1,500 processing fee maximum (for initial application and extension), \$1,000 penalty (once), \$500 for each derivative family member, and \$500 state impact fee (once). The Secretary is allowed to set up installment plans, and there is a special provision for agricultural workers to be credited for some penalties (Section 601, 608).

Registration and Probationary Status. Once an applicant submits a completed application, fingerprints, and is cleared by a one-day background check, he will receive probationary benefits which can eventually be converted to a Z nonimmigrant status after all background checks are clear and the triggers set forth in Title I are achieved.

Timing. DHS will accept applications for Z visa status for one year (that can be extended for another year by DHS), starting 180 days after enactment (during which time, regulations will be promulgated). (Section 601(f)). If an alien is apprehended during the 180 days after enactment, and can prove that he or she would qualify for a Z visa, that alien will not be deported. (Section 601(h)(5)).

Probationary Status. DHS will conduct a background check, to include fingerprint check, within a day, and if not otherwise inadmissible, the alien will be given a probationary status (including work authorization), but will lose it if he or she ever becomes inadmissible. (Section 601(h))

Evidence and Adjudication. The application will be adjudicated and evidence of illegal status before January 1, 2007 weighed, according to standards set out in the bill (but affidavits will not be accepted). The burden of proof is on the alien to prove eligibility. (Section 601(i))

Biometric Card. Z visa holders will be given a biometric card. (Section 601(j)).

Renewal. Z visa holders must prove continuing employment (if older than 16) (Section 601(m)), and if older than 18, take the naturalization exam (civics and English) at the first renewal. Before the second renewal, the Z visa holder must pass the exam.¹⁵ The application fee will be a maximum of \$1500 and the applicant may be required to undergo another background check. (Section 601(k)). They cannot change status to another nonimmigrant category (Section 601(l)).

Permanent Residency. A Z-1 nonimmigrant may adjust status to Lawful Permanent Resident status (i.e., gain a green card) nine years after enactment (after the family backlog under Title V is eliminated). The Z visa population will get green cards over a five-year distribution period. The Z applicant must apply abroad, satisfy the merit requirements in the points schedule set forth in Title V, pay a penalty of \$4,000, and meet the English-language requirements (Section 602(a)(1)). Derivative family members may adjust their status (i.e., get a green card

¹⁵ For more information about the exam and its recent redesign process, go to:
<http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=dcf5e1df53b2f010VgnVCM1000000ecd190aRCRD>

without leaving the U.S.) if the principal Z-1 alien has been given a green card. (Section 602(a)(2)).

The Line. Z visa holders cannot adjust their status before 30 days after the last application in the current line as of May 2005 is adjudicated (Section 602(a)(5)). (Note: apparently all Z visa holders must “adjust status” rather than receive an immigrant visa.)

Taxes. A Z visa holder cannot adjust to permanent residency (and path to citizenship) unless he or she proves payment of all past tax liability, and cannot (along with Y visa holders) claim the Earned Income Tax Credit. (Section 602(a)(8))

Judicial and Administrative Review. A visa applicant will have only one level of administrative review, before a case can move to an Article III court. There will be no review of late filings. Standards of review are set out. (Section 603).

Confidentiality of Application Information. The information in a Z visa application is confidential but could be disclosed under certain conditions (e.g., in certain deportation and criminal cases). Aliens denied Z visas on criminal or security grounds have no confidentiality guarantees. DHS can audit applications for fraud, and revoke benefits secured through fraud, and refer for prosecution. (Sections 604, 605)

Social Security Enumeration/ Credits. DHS will enumerate Z visa holders with Social Security numbers. No Z visa holder, who was enumerated after 2007, will be credited for Social Security quarters, except in the case of certain survivor benefits. No credits will be given for past illegal work. (Section 606, 607)

DREAM ACT. Z visa holders (or those who qualify) under the age of 30 who were brought to the United States out of their own control while under age 16 are eligible to receive their green card after three years rather than eight, if the alien has completed two years at an institution of higher learning. Eligible aliens under this subtitle can delay their fines until age 24 (Subtitle B).

TITLE VII – MISCELLANEOUS (Naturalization, English)

Armed Forces Waiver. Members of the Armed Forces applying for naturalization overseas will have their fingerprints submitted through the Department of Defense. (Section 701)

English. English is declared the national and common language of the United States. (Section 702-703)

Elderly Immigrants. Aliens over age 75 do not have to take the English or civics naturalization exam to become naturalized if they understand and take the Oath of Allegiance. (Section 705)

Office of Citizenship. This office will be authorized \$100 million to carry out its mission of patriotic assimilation of the prospective naturalized. (Section 707)

English Learning. The Department of Education is authorized with what funds it needs to teach English on a wide scale on a non-reimbursable basis.

TITLE VIII – MISCELLANEOUS (See Title I on Asylum)

TITLE IX – MISCELLANEOUS

The title would create the European American Commission to review the U.S. government's treatment of European Americans and European Latin Americans pursuant to the Alien Enemies Acts and various Presidential Proclamations. This would include a study of internments and deportations of immigrants during the World War II period. The Commission would make a recommendation of appropriate remedies. It would be empowered to hold hearings and request the Attorney General to invoke the assistance of District Courts to subpoena persons to provide testimony. The Commission would be authorized to receive \$600,000 in funding.

The title would also create the Commission on Wartime Treatment of Jewish Refugees. The Commission would study the treatment of Jewish refugees fleeing Europe, including the U.S. government's decision (under President Roosevelt) to deny Jewish refugees entry to the U.S. as refugees. It would submit its recommendations 18 months after the first meeting is called. This Commission would have the same powers as the European American Commission. The Commission would be authorized to receive \$600,000 in funding.

CBO Estimate

A Congressional Budget Office (CBO) estimate of the S. 1348 was released on June 4 and is available at http://www.cbo.gov/ftpdocs/81xx/doc8179/SA1150_June4.pdf. Another score, on S. 1639, is not expected; recall that \$4.4 billion in mandatory spending is embedded in section 2 of the bill. In summary, the CBO score estimates that S. 1348 would, if enacted:

- increase the population in the United States by about 1.8 million residents by 2017 (note: this assumes vast numbers of unauthorized aliens would somehow have a route to a green card under current law*);
- increase federal direct spending by \$10 billion over the 2008-2012 period and by \$23 billion over the 2008-2017 period;
- increase federal revenues by \$15 billion over the 2008-2012 period and by \$48 billion over the 2008-2017 period;
- lead to an increase in discretionary spending of \$20 billion over the 2008-2012 period and \$43 billion over the 2008-2017 period;
- increase the on-budget deficit by an estimated \$14 billion over the 2008-2012 period and by an estimated \$30 billion over the 2008-2017 period;
- increase deficits or reduce surpluses by a total of about \$15 billion over the next five years and by about \$18 billion over the 2008-2017 period;
- increase the net cost, as more of the affected immigrants became eligible for benefits and the per capita cost of benefits rose;

- raise direct spending outlays from \$4 billion in 2017 to between \$8 billion and \$10 billion in 2027, and discretionary costs would grow to \$5 billion or \$6 billion a year; and
- increase the on-budget deficit greater than \$5 billion in at least one of the 10-year periods between 2018 and 2057.

Administration Position

At press time, the Administration had not issued a Statement of Administration Policy (SAP) with regard to S. 1639; however, the Administration was deeply involved in negotiations with various Republican and Democratic Senators regarding the bill. The Administration did issue a SAP on S. 1348, however: <http://www.whitehouse.gov/omb/legislative/sap/110-1/s1348sap-s.pdf>.

Possible Amendments

The following 24 amendments are expected to be offered to S. 1639 as a “clay pigeon” amendment, in addition to a managers’ amendment that will contain technical changes. (Note: language of the amendments is subject to change before the “clay pigeon” is offered.) A “clay pigeon” amendment is an amendment that is offered and then divided. Once cloture on the bill is agreed to, there will be up to 30 hours of debate and votes on the divided amendment, and/or relevant motions and points of order. After the use of the debate time all motions, points of order, and remaining divisions will be voted on in stacked fashion, and on the bill itself at the end. There is also expected to be a vote related to a Budget Act point of order to the bill.

1. **Dodd** – would increase the number of green cards for parents of U.S. citizens handed out each year, and [apparently] increase the duration of new parent visitor visas (created under the compromise), strike the study and certification required in the bill regarding the visitor program, and restrict the penalty for overstaying such a visa to the sponsorship of only that individual.
2. **Webb** – would strike the requirement that Z visas leave the United States to obtain a green card, and would limit the pool of unauthorized aliens who could obtain a Z visa to those who have lived here for at least four years.
3. **Baucus** – would strike all references to REAL ID in the bill.
4. **Sanders** – would prohibit a company from petitioning for foreign workers unless the company certifies that there has not been a mass layoff of workers during the past 12 months, and does not intend to conduct a mass layoff anytime soon.
5. **Byrd** – would impose a supplemental fee of \$500 for unauthorized aliens to come into legal status, and mandate the use of the fees for interdiction activities.
6. **Menendez** – would change the points under the merit-based system (created in the bill) allocated to extended family.
7. **Brown** – would require employers who use the Y visa program to post all comparable job opportunities with the State workforce agency.
8. **McCaskill** – would clarify the penalties for an employer that is a repeat violator of the prohibition against employing unauthorized aliens.

9. **Levin** – would allow any Iraqi national member of a religious minority (including Sunni, Christian, Zoroastrian, etc.) in the United States who applied for asylum based on religious persecution, to continue the basis for the asylum claim despite “change in country conditions.”
10. **Leahy** – address and make changes to the investor immigrant visa (EB-5) program (not to be confused with the "E" nonimmigrant visa).
11. **Schumer** – It is uncertain what this amendment will entail other than that it involves biometric Social Security Cards.
12. **Durbin** – It is uncertain what this amendment will entail other than that it involves changes to the H-1B program.
13. **Alexander** – would codify the Oath of Allegiance and Renunciation (that naturalized citizens must take) and create a host of grant programs to assist in the integration of new citizens.
14. **Bond** – would prohibit a Z visa holder (i.e., essentially an unauthorized alien who registers with DHS, passes a background check, and pays a fee) from obtaining a green card.
15. **Coleman** – would add a trigger to Titles IV and VI of the bill that the President must certify that local law enforcement is not being prohibited from acquiring information on a person’s immigration status in certain situations.
16. **Domenici** – would increase the number of Federal District Court judges for areas that have a very high criminal immigration caseload.
17. **Ensign** – would allow aliens to accumulate credit to qualify for Social Security only after they have been assigned a valid Social Security Number (essentially, only after they have been in the United States legally).
18. **Graham/ Kyl** – It is uncertain what this amendment will entail other than that it involves enforcement provisions.
19. **Grassley** – would substitute Title III (Employment Verification System) with its own title.
20. **Hutchison** – would require unauthorized aliens who register to receive a Z visa to return home as a condition of receiving the Z visa.
21. **Thune** – would not allow unauthorized aliens to obtain probationary status until the triggers in section 1 of the bill are completed.
22. **Chambliss** – would not allow a Social Security totalization agreement with any country without first obtaining Congressional approval.
23. **Isakson** – would preempt State laws regarding any State employment verification system (EVS) and prohibit local authorities from requiring (as part of zoning code) companies to provide day laborer shelter or employment site as a condition of building a new company facility at that site.
24. **Graham** - It is uncertain what this amendment will entail other than that it involves mandatory minimum penalties for visa overstayers.

RPC Glossary of Terms for Reading This Legislative Notice

(Note: These terms are working definitions for purposes of reading this Notice, and are not necessarily legal definitions.)

Adjustment of status – means obtaining a green card without leaving the United States (currently available only to legal nonimmigrant aliens.).

Green card – a green card holder is someone who has permanent residency in the United States and has a path to citizenship (which he or she could normally be eligible for five years after gaining a green card, but three years after for someone married to a U.S. citizen; other requirements apply, including passing a naturalization exam). Green card holders, under current law, cannot vote in a *federal* election (because no state allows them to vote), but they may contribute money to a federal campaign to the same extent that U.S. citizens may, and may be able to vote in some local elections (depending on local law).

Immigrant – an alien who intends to permanently reside in the United States (in statutory language, this definition only extends to those entering or in the U.S. legally).

INA – refers to the Immigration & Nationality Act, Title 8 of U.S. Code.

Inadmissible – under INA §212(a) aliens are not allowed entry and cannot get a visa for various reasons, including if the alien has a contagious disease, is a terrorist, is a World War II-era Nazi, is a child abductor, is a former U.S. citizen who renounced to avoid tax liability, or is an unlawful voter. Some inadmissibilities only apply to those seeking permanent residence in the U.S. while others apply to all aliens.

Nonimmigrant – an alien who is legally in the United States under any of a number of specified categories that allow for temporary stay in the United States (including entry for tourism, business, certain types of labor, journalism, being a crew member, investment, trade, studies, being a diplomat, cultural exchange, being a fiancé, to perform as a professional athlete, or for a religious vocation).

Please see attached document prepared by the Administration regarding the distribution of green cards under timelines and quotas set by the bill..

TIMELINE AFTER ENACTMENT

DATE	EVENT
Jan. 1, 2007	<ul style="list-style-type: none"> ▪ Anyone who crossed border (or attempted to cross the border) after this point is permanently barred from the temporary worker program. ▪ Currently, approximately 1.1 million green cards are issued on average each year.
Enactment Date	<ul style="list-style-type: none"> ▪ Anyone who crosses the border or attempts to cross the border after this point is permanently barred from receiving any immigration benefit allowing entry into the U.S. ▪ Illegal immigrants picked up by ICE beginning on date of enactment are allowed to show eligibility for Z visa to secure release.
Next FY after Enactment Date (10/1/07 if bill is passed before 9/30/07)	<ul style="list-style-type: none"> ▪ Elimination of family backlog begins at start of next fiscal year after enactment: <ul style="list-style-type: none"> ○ 240,000 current visas rebalanced; ○ 200,000 visas added to help eliminate backlog; ○ Approximately 1.4 million green cards issued each year. ▪ Merit-based system begins with 247,000 green cards: <ul style="list-style-type: none"> ○ 90,000 devoted to employment backlog; ○ 10,000 set-aside for unskilled.
Enactment Date to Month 6	<ul style="list-style-type: none"> ▪ DHS implements necessary components for registration of undocumented population who meet eligibility requirements and pass a criminal background check.
Enactment Date to Month 18 (Approximately)	<ul style="list-style-type: none"> ▪ Work carried out to meet triggers <ul style="list-style-type: none"> ○ 370 miles of fence, 200 miles of vehicle barriers, 4 unmanned UAVs, 70 ground-based radar and camera towers; 18,000 Border Patrol agents ○ Resources to maintain the end of catch and release (including resources to detain up to 27,500 aliens per day). ○ DHS establishment of worksite enforcement tools, including an electronic employment eligibility verification system and strict standards for identification documents to be presented in the hiring process. ▪ DHS is processing applications for Z status.
Months 6 to 18 (DHS could extend to month 30)	<ul style="list-style-type: none"> ▪ Eligible Undocumented population comes out of shadows to apply for probationary card. <ul style="list-style-type: none"> ○ The workers must pass a background check and show they are employed to earn probationary privileges. ○ Undocumented workers who fail criminal background check or attempt fraud are placed in removal proceedings

Month 18 (approximately)	<p>If triggers are met:</p> <ul style="list-style-type: none"> ▪ TWP begins with cap of 400,000 <ul style="list-style-type: none"> ○ Commission analyzes the formula for determining the annual TWP cap; ○ Commission will report annually on its findings and analysis. ▪ Those who met requirements of probationary card may now obtain Z visas: <ul style="list-style-type: none"> ○ \$1,000 fine for head of household; \$500 per dependent (20% of total due up front; rest may be paid through installment plan); ○ \$500 state impact assistance fee; ○ Processing fees due; ○ No Z visas are awarded until background check on criminal and security history is completed; ○ Show employment; ○ Agree to meet accelerated English and civics requirements; ○ Z visa allows travel across border.
Year 5 1/2	<ul style="list-style-type: none"> ▪ Z visas up for first renewal: <ul style="list-style-type: none"> ○ Additional processing fee due; ○ Additional background check completed. ▪ Z visa holders above age 18 to have taken naturalization test, be enrolled in English class, or on waiting list.
Year 6	<ul style="list-style-type: none"> ▪ Employment backlog is cleared. ▪ 140,000 visas available in merit-based system, 10,000 set-aside for unskilled.
Year 9 1/2	<ul style="list-style-type: none"> ▪ Z visas up for second renewal: <ul style="list-style-type: none"> ○ Additional processing fee due; ○ Additional background check completed. ▪ Z visa holders above age 18 to have completed English and civics requirements by successfully passing naturalization test.
End of Year 8	<ul style="list-style-type: none"> ▪ Backlog eliminated: <ul style="list-style-type: none"> ○ 240,000 family and diversity green cards will now be used for employment-based immigration; ○ Merit-based total is 380,000 with 10,000 set aside for unskilled.
Years 9 to 13	<ul style="list-style-type: none"> ▪ Now that the backlog has been cleared, those who qualified for Z visas begin to qualify for LPR: <ul style="list-style-type: none"> ○ During previous eight years, Z visa head of household must have completed home application process; family can be placed on petition; ○ \$4,000 in additional fines (may be paid through installment plan); ○ Home application for head of household; ○ Show employment for head of household and certain others;

	<ul style="list-style-type: none"> ○ Show merit in new merit-based green card system. ▪ 1.1 million green cards issued annually to entrants from abroad; <ul style="list-style-type: none"> ○ An unknown number of green cards will also be issued to Z visa holders who apply and qualify.
<p>Indefinite date (could be past year 13)</p>	<ul style="list-style-type: none"> ▪ Application of last Z visa holder who applied for LPR reviewed and accepted. ▪ Z visa holders who do not apply for LPR renew every four years. ▪ From here on, approximately 1.1 million total green cards will be issued annually.

Senate RPC

**Comprehensive Immigration Bill –
Changes Reflected in S. 1639**

Location in S. 1639	Modified language in S. 1639	Source of new language	S. 1348
<i>Section 1 Triggers (p. 1, et seq.)</i>	<u>Added:</u> Operational control of the border with Mexico must be demonstrated.	Gregg (SA 1172)	No equivalent provision.
	20,000 Border Patrol Agents hired, trained, and reporting for duty.	Gregg (SA 1172)	18,000 Border Patrol Agents hired.
	300 miles of vehicle barriers.	Gregg (SA 1172)	200 miles of vehicle barriers.
	105 ground based radar and camera towers.	Gregg (SA 1172)	70 ground based radar and camera towers.
	Detention space for 31,500 aliens per day.	Gregg (SA 1172)	Detention space for 27,500 aliens per day.
	Sense of Congress now says border security measure will be put in place “as soon as practicable.”	Gregg (SA 1172)	Sense of Congress was border security measure will be put in place “within 18 months of enactment”.
	<u>Added:</u> GAO report on accuracy of certification that border is secure.	Gregg (SA 1172)	No equivalent provision.
<i>Section 2 (p. 6, et seq.)</i>	<u>Added:</u> Provides for \$4.4 billion to be transferred from the general Treasury fund for the immigration security account to meet the triggers in Sec. 1, and secondarily for interior enforcement and employment verification.	Administration stated that it would add this.	No equivalent provision.

Location in S. 1639	Modified language in S. 1639	Source of new language	S. 1348
<i>Page 13</i>	<u>Added:</u> Additional Shadow Wolves units authorized.	Thomas (SA 1182)	No equivalent provision.
<i>Page 16</i>	<u>Added:</u> Requiring DHS to install 700 miles of fencing at the southwest border, of which 370 miles must be built by December 31, 2008. Added: consulting requirement with Agriculture, Interior, state, local, and Indian stakeholders.	Hutchison (SA 1168)	No equivalent provision
<i>Page 54</i>	\$100 million is appropriated for the Border Relief Grant Program.	Cornyn (SA 1238)	\$50 million appropriated for the program.
<i>Page 72</i>	<u>Added:</u> Northern border prosecution reimbursement.	Cantwell (SA 1167)	No equivalent provision.
<i>Page 75</i>	<u>Added:</u> Asylum and detention safeguards (including recording expedited removal interviews). Added: Options regarding detention decisions.	Lieberman (SA 1191)	No equivalent provisions.
<i>Page 80</i>	<u>Added:</u> Report to Congress on parole procedures. Added: Legal Orientation Program. Added: Conditions of detention.	Lieberman (SA 1191)	
<i>Page 88</i>	<u>Added:</u> Office of Detention Oversight.	Lieberman (SA 1191)	
<i>Page 92</i>	<u>Added:</u> Secure alternatives program and less restrictive detention facilities.	Lieberman (SA 1191)	
<i>Page 118</i>	<u>Added:</u> Inadmissibility and deportability of gang members.	Kennedy (SA 1333)	

Location in S. 1639	Modified language in S. 1639	Source of new language	S. 1348
<i>Page 123</i>	<u>Added:</u> Increased penalties barring admission of convicted sex offenders failing to register. Added: Precluding admissibility of aliens convicted of serious criminal offenses and domestic violence.	Kennedy (SA 1333)	
<i>Page 129</i>	<u>Added:</u> Increased criminal penalties related to drunk driving, perjury, firearms offenses (note: sections 205(b) and 206 are repetitive).	Kennedy (SA 1333)	
<i>Page 140</i>	Increased penalties for illegal reentry into the United States by an alien formerly removed.	Graham (SA 1173)	
<i>Page 194</i>	<u>Added:</u> Judicial review of visa revocation.	Grassley (SA 1166)	
<i>Page 300</i>	<u>Added:</u> Sunset of Y-1 program	Dorgan (SA 1316)	
<i>Page 347</i>	<u>Removed:</u> The exception to good faith recruiting for locations where Secretary of Labor has determined there is a labor shortage.	Durbin/Grassley (SA 1231)	
<i>Page 420</i>	<u>Removed:</u> Removes provisions in S. 1348 (p. 207) that provide non-seasonal agricultural workers the option of coming into the U.S. for two-year periods, renewable twice but with one year outside the U.S. in between. Also, the provision allowing sheep herders, goat herders, horse workers, and dairy workers to enter the U.S. for a period of three years at one time is absent.	Leahy (SA 1165)	
<i>Page 426</i>	Special rules for H-2A dairy workers modified so that they may be admitted for three years and are not subject to certain requirements.	Leahy (SA 1165)	

Location in S. 1639	Modified language in S. 1639	Source of new language	S. 1348
<i>Page 445</i>	Language regarding the term “seasonal” is slightly modified and the conforming amendment section is added to include dairy workers.	Leahy (SA 1165)	
<i>Page 451</i>	The numerical limitations are changed for Y-1 visas.	Bingaman (SA 1169)	
<i>Page 518</i>	<u>Added:</u> A section requiring State Dept. and DHS to review guidance and regulations to ensure consistency in the issuance of B-1 visitor visas, and their acceptance at a port of entry; also, DOS and DHS would need to set up a data tracking system to monitor B-1 visa issuance and use to ensure consistent applications of the guidelines.	Schumer (SA 1272)	
<i>Page 538</i>	<u>Added:</u> Subsection (c)(3) is modified so that family-based applications for green cards filed before January 1, 2007, which would reasonably be expected to become available before January 1, 2027, would be included in the eight-year backlog reduction process (provided for in Title V).	Kyl (SA 1460)	
<i>Page 558</i>	<u>Added:</u> Section 509 exempts from the green card quota aliens who have parents who served in the U.S. military during select conflicts and wars and were later naturalized.	Akaka (SA 1186)	
<i>Page 577</i>	Removed: From the list of acceptable evidence, affidavits that can be presented to prove that an unauthorized alien was illegally present before January 1, 2007.	Cornyn (SA 1250)	

Location in S. 1639	Modified language in S. 1639	Source of new language	S. 1348
<i>Page 577</i>	<u>Added:</u> Payment of income tax requirements for Z visa applicants.	McCain (SA 1190)	
<i>Page 612</i>	The rules on disclosure of information from a Z visa application is modified.	Cornyn (SA 1250)	
<i>Page 617</i>	<u>Added:</u> Provision prohibiting Social Security credits for periods of unauthorized work by Z visa applicants on or after January 1, 2004.	Hutchison (SA 1415)	
<i>Page 621</i>	<u>Added:</u> Language on the \$4.4 billion obligation for immigration enforcement.	N/A	
<i>Page 666</i>	<u>Added:</u> Limitation on Earned Income Tax Credit for Y or Z visa holders is inserted; sec 626 is Reid.	Sessions (SA 1234); Reid (SA 1331)	
<i>Title VII: Misc. (p. 685, et seq.)</i>	<u>Added:</u> Declaration of English as the National and common language.	Inhofe/Salazar (SA 1151/1384)	
<i>Title VII: Misc. (p. 685, et seq.)</i>	<u>Relocated:</u> Pilot Project on immigration practitioner fraud.		Relocated provision
<i>Title VII: Misc. (p. 685, et seq.)</i>	<u>Relocated:</u> Exempts naturalization applicants age 75 or older from the English language and U.S. history/government exams under certain conditions.		Relocated
<i>Title VII: Misc. (p. 685, et seq.)</i>	<u>Relocated:</u> Funding is provided for the Office of Citizenship and Integration.		Relocated

Location in S. 1639	Modified language in S. 1639	Source of new language	S. 1348
<i>Title VII: Misc. (p. 685, et seq.)</i>	<u>Added</u> : A Presidential award for business leadership in promoting American citizenship.		Alexander (SA 1163)
<i>Title VII: Misc. (p. 685, et seq.)</i>	<u>Relocated</u> : Requirement that knowledge and understanding of the Oath of Allegiance be inserted into the naturalization exam.		Relocated
<i>Title VII: Misc. (p. 685, et seq.)</i>	<u>Relocated</u> : The Secretary of Education is required to develop accessible English language training through the Internet.		Relocated
<i>Title VII: Misc. (p. 685, et seq.)</i>	<u>Relocated</u> : GAO is required to study the appellate process for immigration appeals.		Relocated
<i>Title VII: Misc. (p. 685, et seq.)</i>	<u>Added</u> : Creation of an American competitiveness scholarship program using H-1B supplementary fees.	Sanders (SA 1223)	
<i>Title VIII: Misc. (p. 685, et seq.)</i>	<u>Added</u> : New rules on how to handle unaccompanied alien children.	Feinstein (SA 1146)	
<i>Title IX: Misc. (p. 685, et seq.)</i>	<u>Added</u> : Study of wartime treatment of aliens from enemy nations during WWII. Establishes Commissions on Wartime Treatment of European Americans and on Jewish refugees.	Feingold (SA 1176)	